IN THE

Supreme Court of the United States

October Term, 1971

No. 71-834

ROSALIND McCLANAHAN, on behalf of herself and all others similarly situated,

Appellant,

vs.

ARIZONA STATE TAX COMMISSION,

Appellee.

On Appeal from the Supreme Court of Arizona

SUPPLEMENTAL BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

INTRODUCTORY

Pursuant to Rule 16(5) of the Supreme Court of the United States, appellant herewith files a supplemental brief in opposition to appellees' motion to dismiss or affirm. The purpose of this brief is to draw attention to the Buck Act, 4 U.S.C. §§105-110, 61 Stat. 644-646 (1947), *as amended*, 68 Stat. 1227 (1954). Appellee states categorically that "no governing act of Congress is involved in this case" (Appellee's Motion to Dismiss or Affirm, p. 10), but the legislative history of the Buck Act set out below clearly shows that Congress intended to prevent state income taxes from being

levied on trust Indians. The Buck Act underlines the substantiality and importance of the federal questions presented to this Court by this appeal.

THE DECISION OF THE ARIZONA COURT OF APPEALS CONFLICTS WITH THE STATUTORY ALLOCATION OF TAXING AUTHORITY ESTABLISHED BY CONGRESS

The states are granted the authority to collect income taxes from residents of federal areas by 4 U.S.C. §106. However, Indians are expressly exempted from this authority by 4 U.S.C. §109.* (See Appendix). The legislative history of the Buck Act demonstrates (1) that It was intended as a complete allocation of taxing authority in this field to clear up confusion and ambiguity then thought to exist, and (2) that the Indian exemption in §109 was assumed by Congress and the state participants in the enactment of the Buck Act to protect Indians from state taxation.

Congressman Buck first introduced a bill to apply state sales and use taxes in all areas where the federal government "may have jurisdiction". H.R. 6687, 76th Cong. 1st Sess., 84 Cong. Rec. 6737 (1939). This bill passed the House (84 Cong. Rec. 10093) but not the Senate. The following year the Senate Finance Committee amended the bill to add state income taxes, to exempt sales by instrumentalities of the United States, and to exempt Indians. See Sen. Rpt. 1625, 76th Cong., 3d Sess. (1940); Hearings on H.R. 6687 before a Subcomm. of the Senate Comm. on Finance,

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*Analogous grants of jurisdiction have been made in the areas of state sales and use taxes (4 U.S.C. §105); state gasoline taxes (4 U.S.C. § 104); and state unemployment compensation laws (26 U.S.C. §3305(d)). The express Indian exemption applies to sales and use taxes as well as income taxes. 4 U.S.C. §109.

76th Cong., 3d Sess. (Apr. 23, 1940). In this form the bill was passed and became the present 4 U.S.C. §§105-110.

A report prepared by Congressman Buck stated the purpose of the Act:

> Divergent views being expressed by taxpayers and taxing authorities makes [sic] it evident that prolonged and expensive litigation will be required to clarify the law on the subjct if the limits of state authority with respect to the various types of Federal areas are to be established through judicial decisions. This litigation and the period of uncertainty which will necessary [sic] exist pending final decisions by the United States Supreme Court may, however, be avoided through Congressional action. . .

Hearings, *supra*, p. 3.

Whether the grant of taxing authority should apply to Indian reservations was vigorously discussed. A spokesman for the states of California and Washington argued for the inclusion of Indian reservations in the Act. Hearings, *supra*, p. 12; see also the reference to Indian traders at Hearings, *supra*, p. 2. The Interior Department on the other hand sought the exclusion of Indian reservations. Letter from E. K. Burlew to Senate Finance Committee printed at 84 Cong. Rec. 10685 (1939); letter from Governor Miles of New Mexico, Hearings, *supra*, p. 2. But the provision enacted as 4 U.S.C. §109 followed the urging of a representative of New Mexico, set out at Hearings, *supra*, pp. 18-20. He urged the exemption of Indians but not of Indian reservations:

> . . . [W]e have no desire to tax the Indians. They are exempt from taxation in our State, but we do

> not believe that because a man establishes a store on Indian lands competing with a store outside, the store inside should be exempt from all taxation, and the store outside should pay.

Hearings, *supra*, p. 19.

Thus in the Buck Act Congress fully allocated state authority to levy income taxes on persons under federal jurisdiction, and trust Indians were expressly exempted.* Appellee's action in the present case conflicts with the act and should be reversed by this Court. See *Warren Trading Post Co. v. Arizona State Tax Commission*, 380 U.S. 685, 691 n.18 (1956); *cf.*, *Humble Pipe Line Co. v. Waggoner*, 376 U.S. 368, 473: "When Congress has wished to allow a state to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. §§104-110."

Respectfully submitted,

Donald Juneau
Richard B. Collins, Jr.
Theodore R. Mitchell
Stephen A. Harvey
Robert C. Ericson, Law Clerk

Counsel for Appellant

Dated: April , 1972

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*That Congress has the Constitutional authority to exempt Indians is beyond question. *Choate v. Trapp*, 224 U.S. 665, 671 (1912); *see generally* F. Cohen, *Federal Indian Law*, c.13 (1943).

APPENDIX

The Buck Act, 4 U.S.C. §§105-110.

STATE, AND SO FORTH, TAXATION AFFECTING FEDERAL AREAS; SALES OR USE TAX

§105. (a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940.

SAME; INCOME TAG

§106. (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or deriving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable

only with respect to income or receipts received after December 31, 1940.

SAME; EXCEPTION OF UNITED STATES, ITS INSTRUMENTALITIES, AND AUTHORIZED PURCHASES THEREFORM

§107. (a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of personnel of any branch of the Armed Forces of the United States, under regulations promulgated by the departmental Secretary having jurisdiction over such branch.

SAME; JURISDICTION OF UNITED STATES OVER FEDERAL AREAS UNAFFECTED

§108. The provisions of sections 105 to 110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

SAME; EXCEPTION OF INDIANS

§109. Nothing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.

SAME; DEFINITIONS

§110. As used insections 105-109 of this title—

(a) The term "person" shall have the meaning assigned to it in section 3797 of title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

61 Stat. 644-645 (1947), *as amended,* 68 Stat. 1227 (1954).